

House Study Bill 28 - Introduced

HOUSE FILE _____
BY (PROPOSED COMMITTEE
ON JUDICIARY BILL BY
CHAIRPERSON BALTIMORE)

A BILL FOR

1 An Act relating to the residential landlord and tenant laws and
2 related forcible entry and detainer actions and providing
3 penalties.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 535.2, subsection 7, Code 2013, is
2 amended to read as follows:

3 7. This section does not apply to a charge imposed for late
4 payment of rent. ~~However, in the case of a residential lease,~~
5 ~~a late payment fee shall not exceed ten dollars a day or forty~~
6 ~~dollars per month.~~

7 Sec. 2. Section 562A.4, Code 2013, is amended by adding the
8 following new subsection:

9 NEW SUBSECTION. 3. The court may, in any action on a rental
10 agreement, award reasonable attorney fees to the prevailing
11 party.

12 Sec. 3. Section 562A.6, Code 2013, is amended by adding the
13 following new subsections:

14 NEW SUBSECTION. 7A. "*Presumption*" means that the trier of
15 fact must find the existence of the fact presumed unless and
16 until evidence is introduced which would support a finding of
17 its nonexistence.

18 NEW SUBSECTION. 11A. "*Resident*" means an occupant of a
19 dwelling unit who is at least eighteen years of age.

20 Sec. 4. Section 562A.6, subsection 9, Code 2013, is amended
21 to read as follows:

22 9. "*Rent*" means a payment to be made to the landlord under
23 the rental agreement, including late fees pursuant to section
24 562A.9, subsection 3A, and amounts due to the landlord under
25 other provisions of this chapter.

26 Sec. 5. Section 562A.8, Code 2013, is amended to read as
27 follows:

28 **562A.8 Notice Method of notice and service of process.**

29 1. A written notice of termination as required by section
30 562A.27, subsection 1, 2, or 5, a written notice of termination
31 as required by section 562A.34, subsection 1, 2, or 3, a
32 written notice of termination and notice to quit as required by
33 section 562A.27A, or a notice to quit as required by section
34 648.3 shall be served as provided in this subsection.

35 a. A landlord shall serve notice on a tenant by one or more

1 of the following methods:

2 (1) Personal service pursuant to rule of civil procedure
3 1.305, Iowa court rules, for the personal service of original
4 notice.

5 (2) Delivery evidenced by an acknowledgment of service
6 that is signed and dated by a resident of the dwelling unit.
7 Delivery under this subparagraph of a single notice shall be
8 deemed to provide notice to all tenants and occupants of the
9 dwelling unit.

10 (3) Posting the notice on or near a primary entrance door
11 of the subject premises and mailing by regular mail and by
12 certified mail, as defined in section 618.15, to the address of
13 the dwelling unit or to an address provided by the tenant for
14 mailing.

15 (4) A method of providing notice that results in the notice
16 actually being received by the tenant.

17 b. A tenant shall serve notice on a landlord by one or more
18 of the following methods:

19 (1) Personal service pursuant to rule of civil procedure
20 1.305, Iowa court rules, for the personal service of original
21 notice.

22 (2) Delivery evidenced by an acknowledgment of delivery
23 that is signed and dated by the landlord or the landlord's
24 agent designated under section 562A.13.

25 (3) Mailing by both regular mail and by certified mail, as
26 defined in section 618.15, to the address of the landlord's
27 business office or to an address designated by the landlord for
28 mailing.

29 (4) A method of providing notice that results in the notice
30 actually being received by the landlord.

31 ~~1.~~ 2. Notices All other notices required under this
32 chapter, except those notices identified in section 562A.29A,
33 shall be served as follows: provided in this subsection.

34 a. A landlord shall serve notice on a tenant by one or more
35 of the following methods:

1 (1) Hand delivery to the tenant as evidenced by a written
2 confirmation of delivery signed and dated by the landlord.

3 (2) Delivery evidenced by an acknowledgment of ~~delivery~~
4 service that is signed and dated by a resident of the dwelling
5 unit who is at least eighteen years of age. Delivery under
6 this subparagraph of a single notice shall be deemed to provide
7 notice to all tenants and occupants of the dwelling unit.

8 (3) Personal service pursuant to rule of civil procedure
9 1.305, Iowa court rules, for the personal service of original
10 notice.

11 (4) Mailing by both regular mail and certified mail, as
12 defined in section 618.15, to the address of the dwelling unit
13 or to an address provided by the tenant for mailing.

14 (5) Posting on the primary entrance door of the dwelling
15 unit. ~~A notice posted according to this subparagraph shall be~~
16 ~~posted within the applicable time period for serving notice and~~
17 ~~shall include the date the notice was posted.~~

18 (6) A method of providing notice that results in the notice
19 actually being received by the tenant.

20 b. A tenant shall serve notice on a landlord by one or more
21 of the following methods:

22 (1) Hand delivery to the landlord or the landlord's agent
23 designated under section 562A.13 at the landlord's business
24 office, as evidenced by a written confirmation of delivery
25 signed and dated by the tenant.

26 (2) Delivery evidenced by an acknowledgment of delivery
27 that is signed and dated by the landlord or the landlord's
28 agent designated under section 562A.13.

29 (3) Personal service pursuant to rule of civil procedure
30 1.305, Iowa court rules, for the personal service of original
31 notice.

32 ~~(4) Delivery to an employee or agent of the landlord at the~~
33 ~~landlord's business office.~~

34 ~~(5)~~ (4) Mailing by both regular mail and certified mail,
35 as defined in section 618.15, to the address of the landlord's

1 business office or to an address designated by the landlord for
2 mailing.

3 ~~(6)~~ (5) A method of providing notice that results in the
4 notice actually being received by the landlord.

5 3. If service of notice includes posting, the notice shall
6 be posted within the same time period that is applicable
7 to other methods of giving notice under the circumstances.
8 The posted notice shall set forth, on its face, the date
9 of posting. An affidavit signed by the person posting and
10 notarized or certified under penalty of perjury pursuant
11 to section 622.1 shall be evidence of service of notice by
12 posting. Service of notice by posting is deemed completed one
13 day after the notice is posted.

14 ~~2. 4.~~ Notice served by mail ~~under this section~~ is deemed
15 completed ~~four~~ three days after the notice is deposited in the
16 mail and postmarked for delivery, ~~whether or not the recipient~~
17 ~~signs a receipt for the notice~~ date of the postmark.

18 5. In the case of service of notice by multiple methods, the
19 latest date of completed service shall be the day used for the
20 calculation of any time periods pertaining to the notice.

21 Sec. 6. Section 562A.9, Code 2013, is amended by adding the
22 following new subsection:

23 NEW SUBSECTION. 3A. A rental agreement shall not provide
24 for a late fee that exceeds twenty dollars per day or a total
25 amount equal to ten percent of the monthly rent.

26 Sec. 7. Section 562A.11, subsection 1, paragraph c, Code
27 2013, is amended to read as follows:

28 c. Agrees to pay the other party's attorney fees, except
29 that a written agreement may provide notification that attorney
30 fees may be awarded to the prevailing party in the event of
31 court action; or

32 Sec. 8. Section 562A.12, subsection 8, Code 2013, is amended
33 by striking the subsection.

34 Sec. 9. Section 562A.17, subsection 6, Code 2013, is amended
35 to read as follows:

1 6. Not deliberately or negligently destroy, deface, damage,
2 impair or remove a part of the premises or knowingly permit a
3 person to do so. Violation of this subsection may result in
4 criminal charges under chapter 716.

5 Sec. 10. Section 562A.27, subsection 3, Code 2013, is
6 amended to read as follows:

7 3. Except as provided in this chapter, the landlord may
8 recover damages and obtain injunctive relief for noncompliance
9 by the tenant with the rental agreement or section 562A.17
10 unless the tenant demonstrates affirmatively that the
11 tenant has exercised due diligence and effort to remedy any
12 noncompliance, and that the tenant's failure to remedy any
13 noncompliance was due to circumstances beyond the tenant's
14 control. ~~If the tenant's noncompliance is willful, the~~
15 ~~landlord may recover reasonable attorney fees.~~

16 Sec. 11. Section 562A.30, Code 2013, is amended by striking
17 the section and inserting in lieu thereof the following:

18 **562A.30 Waiver of landlord's right to terminate.**

19 Acceptance by the landlord of performance by the tenant that
20 varies from the terms of the rental agreement or the rules
21 subsequently adopted by the landlord shall not be a waiver of
22 the landlord's right to terminate the rental agreement for that
23 breach of the agreement. Failure by the landlord to promptly
24 assert rights under this section shall not be a waiver of
25 such rights or a waiver of any existing or subsequent breach.
26 Waiver of any breach shall not constitute a waiver of any
27 subsequent and similar breach.

28 Sec. 12. Section 562A.32, Code 2013, is amended to read as
29 follows:

30 **562A.32 Remedy after termination.**

31 If the rental agreement is terminated by either party, the
32 landlord may have a claim for possession ~~and for rent~~ and a
33 separate claim for rent, actual damages for breach of the
34 rental agreement, and reasonable attorney fees as provided in
35 ~~section 562A.27.~~

1 Sec. 13. Section 562A.36, subsection 2, Code 2013, is
2 amended to read as follows:

3 2. If the landlord acts in violation of subsection 1 of
4 this section, the tenant may recover from the landlord the
5 actual damages sustained by the tenant and reasonable attorney
6 fees, and has a defense in action against the landlord for
7 possession. In an action by or against the tenant, evidence
8 of a ~~good-faith~~ good-faith complaint within one year prior to
9 the alleged act of retaliation creates a presumption that the
10 landlord's conduct was in retaliation. The presumption does
11 not arise if the tenant made the complaint after notice of a
12 proposed rent increase or diminution of services. Evidence
13 by the landlord that legitimate costs and charges of owning,
14 maintaining or operating a dwelling unit have increased shall
15 be a defense against the presumption of retaliation when a
16 rent increase is commensurate with the increase in costs and
17 charges. ~~"Presumption" means that the trier of fact must find~~
18 ~~the existence of the fact presumed unless and until evidence is~~
19 ~~introduced which would support a finding of its nonexistence.~~

20 Sec. 14. Section 562B.9, Code 2013, is amended to read as
21 follows:

22 **562B.9 Notice Method of notice and service of process.**

23 1. A written notice of termination as required by section
24 562B.25, subsection 1 or 2, a written notice of termination and
25 notice to quit as required by section 562B.25A, or a notice
26 to quit as required by section 648.3 shall be served upon the
27 tenant by one of the following methods:

28 a. Personal service pursuant to rule of civil procedure
29 1.305, Iowa court rules, for the personal service of original
30 notice.

31 b. Delivery evidenced by an acknowledgment of service
32 that is signed and dated by a resident of the dwelling unit.
33 Delivery under this paragraph of a single notice shall be
34 deemed to provide notice to all tenants and occupants of the
35 dwelling unit.

1 c. Posting the notice on or near a primary entrance door
2 of the subject premises and mailing by regular mail and by
3 certified mail, as defined in section 618.15, to the address of
4 the dwelling unit or to an address provided by the tenant for
5 mailing.

6 d. A method of providing notice that results in the notice
7 actually being received by the tenant.

8 ~~1.~~ 2. Notices All other notices required under this
9 chapter, ~~except those notices identified in section 562B.27A,~~
10 shall be served as follows: provided in this subsection.

11 a. A landlord shall serve notice on a tenant by one or more
12 of the following methods:

13 (1) Hand delivery to the tenant as evidenced by a written
14 confirmation of delivery signed and dated by the landlord.

15 (2) Delivery evidenced by an acknowledgment of ~~delivery~~
16 service that is signed and dated by a resident of the dwelling
17 unit who is at least eighteen years of age. Delivery under
18 this subparagraph of a single notice shall be deemed to provide
19 notice to all tenants and occupants of the dwelling unit.

20 (3) Personal service pursuant to rule of civil procedure
21 1.305, Iowa court rules, for the personal service of original
22 notice.

23 (4) Mailing by both regular mail and certified mail, as
24 defined in section 618.15, to the address of the dwelling unit
25 or to an address provided by the tenant for mailing.

26 (5) Posting on the primary entrance door of the dwelling
27 unit. ~~A notice posted according to this subparagraph shall be~~
28 ~~posted within the applicable time period for serving notice and~~
29 ~~shall include the date the notice was posted.~~

30 (6) A method of providing notice that results in the notice
31 actually being received by the tenant.

32 b. A tenant shall serve notice on a landlord by one or more
33 of the following methods:

34 (1) Hand delivery to the landlord or the landlord's agent
35 designated under section 562B.14 at the landlord's business

1 office, as evidenced by a written confirmation of delivery
2 signed and dated by the tenant.

3 (2) Delivery evidenced by an acknowledgment of delivery
4 that is signed and dated by the landlord or the landlord's
5 agent designated under section 562B.14.

6 (3) Personal service pursuant to rule of civil procedure
7 1.305, Iowa court rules, for the personal service of original
8 notice.

9 ~~(4) Delivery to an employee or agent of the landlord at the~~
10 ~~landlord's business office.~~

11 ~~(5)~~ (4) Mailing by both regular mail and certified mail,
12 as defined in section 618.15, to the address of the landlord's
13 business office or to an address designated by the landlord for
14 mailing.

15 ~~(6)~~ (5) A method of providing notice that results in the
16 notice actually being received by the landlord.

17 3. If service of notice includes posting, the notice shall
18 be posted within the same time period that is applicable
19 to other methods of giving notice under the circumstances.
20 The posted notice shall set forth, on its face, the date
21 of posting. An affidavit signed by the person posting and
22 notarized or certified under penalty of perjury pursuant
23 to section 622.1 shall be evidence of service of notice by
24 posting. Service of notice by posting is deemed completed one
25 day after the notice is posted.

26 ~~2. 4. Notice served by mail under this section is deemed~~
27 ~~completed four~~ three ~~days after the notice is deposited in the~~
28 ~~mail and postmarked for delivery, whether or not the recipient~~
29 ~~signs a receipt for the notice~~ date of the postmark.

30 5. In the case of service of notice by multiple methods, the
31 latest date of completed service shall be the day used for the
32 calculation of any time periods pertaining to the notice.

33 Sec. 15. Section 648.3, Code 2013, is amended to read as
34 follows:

35 **648.3 Notice to quit.**

1 1. Before action can be brought under any ground specified
2 in section 648.1, except subsection 1, three days' notice to
3 quit must be given to the defendant in writing. However, a
4 landlord who has given a tenant three days' notice to pay rent
5 and has terminated the tenancy as provided in section 562A.27,
6 subsection 2, or section 562B.25, subsection 2, if the tenant
7 is renting the manufactured or mobile home or the land from the
8 landlord, may commence the action without giving a three-day
9 notice to quit.

10 2. A notice to quit required under subsection 1 shall
11 be served on the defendant according to one or more of the
12 following methods:

13 a. Delivery evidenced by an acknowledgment of ~~delivery~~
14 service that is signed and dated by a resident of the premises
15 who is at least eighteen years of age. Delivery under this
16 paragraph of a single notice shall be deemed to provide notice
17 ~~to the defendant~~ all tenants and occupants of the dwelling
18 unit.

19 b. Personal service pursuant to rule of civil procedure
20 1.305, Iowa court rules, for the personal service of original
21 notice.

22 c. Posting the notice on ~~the~~ or near a primary entrance door
23 of the subject premises and mailing by both regular mail and
24 certified mail, as defined in section 618.15, to the address
25 of the ~~premises or to the defendant's last known address,~~
26 ~~if different from the address of the premises.~~ A notice
27 ~~posted according to this paragraph shall be posted within the~~
28 ~~applicable time period for serving notice and shall include~~
29 ~~the date the notice was posted~~ dwelling unit or to an address
30 provided by the tenant for mailing.

31 d. A method of providing notice that results in the notice
32 actually being received by the tenant.

33 2A. If service of notice includes posting, the notice
34 shall be posted within the same time period that is applicable
35 to other methods of giving notice under the circumstances.

1 The posted notice shall set forth, on its face, the date of
2 the posting. An affidavit signed by the person posting and
3 notarized or certified under penalty of perjury pursuant
4 to section 622.1 shall be evidence of service of notice by
5 posting. Service of notice by posting is deemed completed one
6 day after the notice is posted.

7 ~~3. A notice to quit~~ Notice served by mail ~~under this~~
8 ~~section~~ is deemed completed ~~four~~ three days after the notice
9 ~~is deposited in the mail and postmarked for delivery, whether~~
10 ~~or not the recipient signs a receipt for the notice~~ date of the
11 postmark.

12 4. In the case of service of notice by multiple methods, the
13 latest date of completed service shall be the day used for the
14 calculation of any time periods pertaining to the notice.

15 Sec. 16. Section 648.5, subsection 2, paragraphs a and c,
16 Code 2013, are amended to read as follows:

17 a. Delivery evidenced by an acknowledgment of service that
18 is signed and dated by a resident of the premises who is at
19 least eighteen years of age. Delivery under this paragraph
20 of a single notice shall be deemed to provide notice to all
21 ~~tenants or residents~~ and occupants of the premises. Service
22 of original notice under this paragraph is invalid if the
23 acknowledgment of service is signed and dated less than three
24 days prior to the hearing.

25 c. If service cannot be made following two attempts using
26 a method specified under paragraph "a" or "b", by posting
27 on or near the primary entrance door of the premises and
28 mailing by both regular mail and certified mail, as defined
29 in section 618.15, to the address of the premises or to the
30 defendant's last known address, if different from the address
31 of the premises. An original notice posted according to this
32 paragraph shall be posted not less than three days prior to
33 the hearing and shall include the date the original notice was
34 posted. Service of original notice by mailing shall occur not
35 less than three days prior to the hearing.

1 Sec. 17. Section 648.5, subsection 3, Code 2013, is amended
2 to read as follows:

3 3. Service of original notice by mail is deemed completed
4 ~~four~~ three days after the notice is ~~deposited in the mail and~~
5 postmarked for delivery, whether or not the recipient signs a
6 receipt for the original notice.

7 Sec. 18. Section 714H.4, subsection 1, Code 2013, is amended
8 by adding the following new paragraph:

9 NEW PARAGRAPH. 1. A rental agreement or other
10 landlord-tenant relationship as set forth in chapter 562A.

11 Sec. 19. REPEAL. Sections 562A.29A and 562B.27A, Code 2013,
12 are repealed.

13 EXPLANATION

14 This bill makes changes to the residential landlord and
15 tenant laws in Code chapters 562A and 562B, and related
16 provisions in Code chapter 648 (forcible entry and detainer).

17 The bill strikes language regarding maximum fees for late
18 payment of rent in Code section 535.2, and the substance of
19 the provision is transferred to Code section 562A.9, except
20 that the bill increases the maximum payment that may be imposed
21 for late payment of rent from \$10 a day or \$40 per month to an
22 amount not to exceed \$20 per day or a total amount equal to 10
23 percent of the monthly rent.

24 The bill amends Code section 562A.6 regarding general
25 definitions for Code chapter 562A. The bill strikes language in
26 Code section 562A.36, concerning the meaning of "presumption",
27 and transfers the substance of the provision to Code section
28 562A.6. The bill defines "resident" as an occupant of a
29 dwelling unit who is at least 18 years of age. The bill amends
30 the definition of "rent" to state that rent also means a
31 payment to be made to the landlord pursuant to Code chapter
32 562A, including late fees as provided in Code section 562A.9.

33 The bill amends Code sections 562A.8 and 562B.9, regarding
34 method of notice and service of process, to transfer and
35 modify the provisions contained in Code sections 562A.29A and

1 562B.27A, which are repealed by the bill. The bill also makes
2 changes to provisions regarding service of notice when serving
3 a written notice of termination pursuant to Code sections
4 562A.27, 562A.34, and 562B.25, a notice of termination and
5 notice to quit pursuant to Code sections 562A.27A and 562B.25A,
6 or a notice to quit as required by Code section 648.3. The bill
7 provides that the delivery of a single notice when the delivery
8 is evidenced by an acknowledgment of service that is signed and
9 dated by a resident of the dwelling unit is deemed to provide
10 notice to all tenants and occupants of the dwelling unit. The
11 bill amends the service of notice provided by posting to allow
12 posting on or near the primary entrance door rather than only
13 on the primary entrance door. The bill adds that a method of
14 providing notice that results in the notice actually being
15 received by the tenant is a valid method of notice.

16 The bill also amends the method of notice provided in Code
17 sections 562A.8 and 562B.9 for all other types of notice
18 required under the Code chapter. The bill requires hand
19 delivery of a notice to the tenant to be evidenced by a written
20 confirmation of delivery signed and dated by the landlord. The
21 bill provides that delivery of a single notice evidenced by
22 an acknowledgment of service, rather than an acknowledgment
23 of delivery, that is signed and dated by a resident of the
24 dwelling unit is deemed to provide notice to all tenants
25 and occupants of the dwelling unit. The bill requires hand
26 delivery of a notice to the landlord or the landlord's agent to
27 be delivered to the landlord's business office, as evidenced
28 by a written confirmation of delivery signed and dated by the
29 tenant. The bill strikes the provision in current law that
30 allows delivery to an employee or agent of the landlord at the
31 landlord's business office as a valid method of service.

32 The bill provides that service of notice by posting is
33 complete one day after a notice is posted. The bill decreases
34 the number of days from four to three before a notice served
35 by mail is deemed complete. The bill provides that when

1 using multiple methods of service, the latest date of service
2 shall be the day used for the calculation of any time periods
3 pertaining to the notice.

4 The bill amends Code section 562A.11 concerning prohibited
5 provisions in rental agreements by adding that the parties may
6 enter into a written agreement to provide notification that
7 attorney fees may be awarded to the prevailing party in the
8 event of court action.

9 The bill amends Code section 562A.12, relating to security
10 deposits, by striking a provision regarding an award of
11 reasonable attorney fees, but the substance of the provision is
12 transferred to Code section 562A.4, relating to administration
13 of remedies and their enforcement under Code chapter 562A,
14 generally. The bill makes corresponding amendments to
15 Code section 562A.27, regarding noncompliance with a rental
16 agreement, and Code section 562A.32, regarding remedies after
17 termination.

18 The bill adds that a tenant who destroys or damages a
19 premises may face criminal charges pursuant to Code chapter
20 716, regarding damage to property.

21 The bill strikes and rewrites Code section 562A.30,
22 relating to waiver of a landlord's right to terminate a
23 rental agreement, to provide that a landlord's acceptance of
24 a tenant's performance that varies from the rental agreement
25 or rules does not constitute a waiver of the landlord's right
26 to terminate the rental agreement for that breach. The bill
27 further states that the landlord's failure to promptly assert
28 rights is not a waiver of the landlord's rights or of any
29 existing or subsequent breach. The bill provides that a waiver
30 of any breach does not constitute a waiver of any subsequent
31 breach.

32 The bill amends provisions in Code section 648.3, regarding
33 service of a notice to quit, to mirror the method of notice
34 provisions in Code sections 562A.8 and 562B.9, as amended by
35 the bill. The bill provides that an affidavit signed by the

1 person posting and notarized or certified under penalty of
2 perjury constitutes evidence of the service of notice. Service
3 of notice by posting is complete one day after notice is
4 posted. Notice served by certified mail is deemed completed
5 three days after date of postmark rather than four days after
6 notice is deposited and postmarked. The bill also provides
7 in Code section 648.3 that when notice is served by multiple
8 methods, the latest date of service is the day used for the
9 calculation of any time periods stated in the notice.

10 The bill amends Code section 648.5 to provide that service by
11 mail of original notice of a forcible entry and detainer action
12 is deemed completed three days after the notice is postmarked
13 for delivery, rather than four days after the mail is deposited
14 and postmarked for delivery.

15 The bill amends Code section 714H.4 to provide that the
16 consumer fraud chapter regarding private actions does not apply
17 to a rental agreement or other landlord-tenant relationship
18 under Code chapter 562A.